

AMENDED IN SENATE APRIL 7, 2003

**SENATE BILL**

**No. 39**

**Introduced by Senator Perata**  
(Principal coauthor: Assembly Member Chan)

January 3, 2003

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An act relating to the Oakland Unified School District, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, as amended, Perata. Oakland Unified School District: emergency loan.

~~Existing law authorizes the governing board of a school district that determines during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations to request an emergency apportionment through the Superintendent of Public Instruction subject to specified requirements and repayment provisions.~~

*(1) Existing law provides for emergency apportionments to school districts subject to specified conditions including, in certain circumstances, the repayment of an emergency loan over a period of no more than 10 years and the appointment by the Superintendent of Public Instruction of an administrator who would exercise the powers and responsibilities of the governing board of the school district.*

This bill would appropriate \$100,000,000 from the General Fund ~~an unspecified amount~~ to the Superintendent of Public Instruction for the purpose of providing the Oakland Unified School District with an emergency loan. *The bill would require the superintendent to appoint a trustee to oversee the operations of the district, and would authorize the trustee to stay or rescind any action of the governing board that may*

*affect the financial condition of the district. The bill would authorize loan funds to be disbursed from the proceeds of the loan only if the trustee and the County Office Fiscal Crisis and Management Assistance Team (FCMAT) jointly determine that disbursement is necessary. The bill would require the district to repay the loan as a straight line loan amortized over a 20-year term, with interest as provided. The bill would require the district, in consultation with FCMAT, to develop a financial recovery plan, to be approved by the Alameda County Superintendent of Schools, and would require the district, each year, to prepare and submit to the trustee 4 quarterly financial reports evidencing progress on its financial recovery plan. The bill would require the plan, upon being approved by the trustee, to be submitted to the county superintendent of schools, the Superintendent of Public Instruction, and the Controller. Under the bill, if the Superintendent of Public Instruction determines that the district is not evidencing sufficient progress on its recovery plan, the trustee may exercise the powers of an administrator.*

*The bill would authorize the district from June 1, 2003, to June 30, 2005, inclusive, to declare as surplus property any property of the district and to sell, sell back, lease or leaseback that property on or before June 30, 2004, and use the proceeds from that transaction to reduce or retire the loan.*

*The bill would require the school district to prepare specified reports, and would require the district, except as specified, to bear 100% of all costs associated with implementing its provisions, thereby imposing a state-mandated local program.*

~~This~~

*(2) This bill would declare that due to the unique circumstances relating to the Oakland Unified School District's fiscal emergency, a general statute cannot be made applicable.*

*(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason and would provide that with regard to any other mandates, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*



~~This~~

(4) *This* bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: yes. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. The Legislature finds and declares that because~~  
2     ~~of the fiscal emergency in which the Oakland Unified School~~  
3     ~~District finds itself, it is necessary for an appropriation to be made~~  
4     ~~to Section A of the State School Fund for apportionment by the~~  
5     ~~Superintendent of Public Instruction to the Oakland Unified~~  
6     ~~School District for the purposes of an emergency loan.~~

7     ~~SEC. 2. The sum of \_\_\_\_\_ dollars (\$\_\_\_\_) is hereby~~  
8     ~~appropriated from the General Fund to Section A of the State~~  
9     ~~School Fund for apportionment by the Superintendent of Public~~  
10    ~~Instruction to the Oakland Unified School District for the purpose~~  
11    ~~of an emergency loan.~~

12    ~~SEC. 3.—~~

13    ~~SECTION 1. The Legislature finds and declares all of the~~  
14    ~~following:~~

15    ~~(a) Providing a quality education that meets the unique needs~~  
16    ~~of Oakland public school pupils is a fundamental interest that~~  
17    ~~should not be jeopardized.~~

18    ~~(b) In late August 2002, the Oakland Unified School District~~  
19    ~~became aware of a negative general fund balance for the 2001–02~~  
20    ~~fiscal year, and of potential deficits in its 2002–03 budget, and~~  
21    ~~thereafter, promptly reported this information to the Alameda~~  
22    ~~County Office of Education.~~

23    ~~(c) The Oakland Unified School District is projected to run out~~  
24    ~~of cash in May of 2003 and will be unable to pay school employees~~  
25    ~~unless immediate action is taken.~~

26    ~~(d) The Oakland Unified School District and its community~~  
27    ~~have the will and ability to continue the key educational reforms~~  
28    ~~that have benefited Oakland public school pupils in the last three~~  
29    ~~years and to make difficult decisions in order to immediately~~  
30    ~~eliminate all further overspending by the district.~~

31    ~~(e) Despite initial budget cuts for the 2002–03 fiscal year~~  
32    ~~exceeding fourteen million dollars (\$14,000,000) and additional~~

1 *budget cuts and adjustments of seventeen million dollars*  
2 *(\$17,000,000), the Oakland Unified School District will have a*  
3 *negative fund balance at the close of the current fiscal year and*  
4 *will require a loan from the State of California.*

5 *(f) In contrast to the circumstances surrounding other school*  
6 *districts that have recently received state loans, there have not*  
7 *been any accusations of intentional mismanagement or fraud in*  
8 *the Oakland Unified School District. The budget deficits at the*  
9 *Oakland Unified School District were inadvertently hidden by an*  
10 *inadequate system of checks and balances in the district's financial*  
11 *services division, and were exacerbated by declining enrollment,*  
12 *increases in health care costs, and state education budget cuts.*

13 *(g) Despite its financial condition, the Oakland Unified School*  
14 *District has made demonstrable academic improvements over the*  
15 *last few years, witnessed by test score improvements, more fully*  
16 *credentialed teachers in Oakland classrooms, and increased*  
17 *parental and community involvement.*

18 *SEC. 2. (a) It is the intent of the Legislature that the trustee*  
19 *appointed pursuant to this act should work with the present*  
20 *administrators and governing board of the Oakland Unified*  
21 *School District to identify the procedures and programs currently*  
22 *implemented by the district that have proven to do one or more of*  
23 *the following:*

24 *(1) Significantly raise pupil achievement.*

25 *(2) Improve pupil attendance.*

26 *(3) Lower pupil dropout rate.*

27 *(4) Increase parental involvement.*

28 *(b) It is the intent of the Legislature that these identified*  
29 *procedures and programs should be protected, maintained, and*  
30 *expanded as the district's budget allows.*

31 *SEC. 3. (a) Acceptance by the governing board of the*  
32 *Oakland Unified School District of the emergency loan authorized*  
33 *by Section 12 of this act constitutes an agreement by the Oakland*  
34 *Unified School District to all of the following conditions:*

35 *(1) The Superintendent of Public Instruction shall appoint a*  
36 *trustee who has recognized expertise in management and finance*  
37 *to oversee the operations of the district. The superintendent may*  
38 *also employ, on a short-term basis, any staff necessary to assist the*  
39 *trustee, including, but not limited to, a certified public accountant.*

1     (2) *The expenses incurred by the trustee and any necessary staff*  
2 *shall be paid by the district.*

3     (3) *The superintendent shall establish the terms and conditions*  
4 *of the employment of the trustee and staff, including the salary of*  
5 *the trustee. The trustee shall serve at the pleasure of, and report*  
6 *directly to, the superintendent.*

7     (4) *The trustee, and any necessary staff, shall serve until the*  
8 *emergency loan authorized by Section 12 of this act is fully repaid,*  
9 *the district has adequate fiscal systems and controls in place as*  
10 *determined by the superintendent, the district develops the*  
11 *financial recovery plan as required by Section 8 of this act, and the*  
12 *superintendent determines that the district's future compliance*  
13 *with the financial recovery plan will lead to fiscal solvency.*

14     SEC. 4. (a) *To facilitate the appointment of the trustee and*  
15 *the employment of any necessary staff for purposes of this act, the*  
16 *superintendent is exempt from the requirements of Article 6*  
17 *(commencing with Section 999) of Chapter 6 of Division 4 of the*  
18 *Military and Veterans Code and Part 2 (commencing with Section*  
19 *10100) of the Public Contract Code.*

20     (b) *Notwithstanding any other law, the superintendent may*  
21 *appoint an employee of the State Department of Education to act*  
22 *as trustee for up to the duration of the trusteeship. The salary and*  
23 *benefits of that employee shall be established by the*  
24 *superintendent and paid by the school district. During the time of*  
25 *appointment, the employee shall be deemed an employee of the*  
26 *school district, but shall remain in the same retirement system*  
27 *under the same plan as if the employee had remained in the*  
28 *department. Upon the expiration or termination of the*  
29 *appointment, the employee shall have the right to return to his or*  
30 *her former position, or to a position at substantially the same level*  
31 *as that position, with the department. The time served in the*  
32 *appointment shall be counted for all purposes as if the employee*  
33 *had served that time in his or her former position with the*  
34 *department.*

35     (c) *For all purposes of errors and omissions liability insurance*  
36 *policies, the trustee appointed pursuant to this act shall be deemed*  
37 *to be an employee of the district.*

38     (d) *For the purpose of workers' compensation benefits, the*  
39 *trustee shall be deemed an employee of the district, except that a*  
40 *trustee appointed pursuant to subdivision (b) of Section 4 shall be*

1 *deemed an employee of the State Department of Education for that*  
2 *purpose.*

3 *(e) Except for a trustee appointed by the superintendent*  
4 *pursuant to subdivision (b), the trustee shall be a member of the*  
5 *State Teachers' Retirement System, if qualified, for the period of*  
6 *service as trustee, unless the trustee elects in writing not to become*  
7 *a member. A person who is a member or retirant of the State*  
8 *Teachers' Retirement System at the time of appointment shall*  
9 *continue to be a member or retirant of the system for the duration*  
10 *of the appointment. If the trustee chooses to become a member or*  
11 *is already a member, the trustee shall be placed on the payroll of*  
12 *the district for the purposes of providing appropriate contributions*  
13 *to the system. The superintendent may also require that any trustee*  
14 *appointed pursuant to subdivision (b) be placed on the payroll of*  
15 *the school district for purposes of remuneration, other benefits,*  
16 *and payroll deductions.*

17 *SEC. 5. (a) The trustee appointed pursuant to this act shall*  
18 *monitor and review the operation of the Oakland Unified School*  
19 *District. During the period of his or her service, the trustee may*  
20 *stay or rescind any action of the governing board that, in the*  
21 *judgment of the trustee, may affect the financial condition of the*  
22 *district.*

23 *(b) The trustee, during the duration of his or her appointment,*  
24 *shall maintain the core educational reforms that have led to*  
25 *districtwide improvement of academic achievement, including, but*  
26 *not limited to, educational reforms targeting underperforming*  
27 *schools, new small schools, and other reforms that have*  
28 *demonstrated measurable success.*

29 *(c) The superintendent may establish timelines and prescribe*  
30 *formats for reports and other materials to be prepared by the*  
31 *district and used by the trustee to monitor and review the*  
32 *operations of the district. The trustee shall approve all reports and*  
33 *other materials required from the district as a condition of*  
34 *receiving the loan.*

35 *(d) Notwithstanding any other law, all reports submitted to the*  
36 *trustee shall be public records.*

37 *(e) The superintendent, upon the recommendation of the*  
38 *trustee, may reduce any apportionment to the district in an amount*  
39 *up to two hundred dollars (\$200) per day for each late or*  
40 *unacceptable report or other material required under Part 24*



1 (commencing with Section 41000) of the Education Code, and  
2 shall report to the Legislature any failure of the district to comply  
3 with the requirements of that part.

4 (f) If the superintendent determines, at any time, that the  
5 financial recovery plan developed by the district under Section 8  
6 of this act is unsatisfactory, he or she may modify the plan as  
7 necessary, and the district shall comply with the plan as modified.

8 SEC. 6. At the request of the Superintendent of Public  
9 Instruction, the Controller shall transfer to the State Department  
10 of Education, from any apportionment to which the Oakland  
11 Unified School District would otherwise have been entitled  
12 pursuant to Section 42238, the amount necessary to pay the  
13 expenses incurred by the trustee and any associated costs incurred  
14 by the county superintendent of schools for purposes of this act.

15 SEC. 7. The trustee shall consider, on a monthly basis, or more  
16 frequently if so desired by the trustee, information relating to the  
17 fiscal condition of the district from one or more groups from each  
18 of the following categories:

19 (a) The governing board of the school district.

20 (b) Any advisory council of the school district.

21 (c) Any parent-teacher organization of the school district.

22 (d) Representatives from the community in which the school  
23 district is located.

24 (e) The County Office Fiscal Crisis and Management  
25 Assistance Team.

26 SEC. 8. (a) The Oakland Unified School District, in  
27 consultation with the County Office Fiscal Crisis and  
28 Management Assistance Team, shall develop a financial recovery  
29 plan, which shall be approved by the Alameda County  
30 Superintendent of Schools that shall include, among other things,  
31 all of the following:

32 (1) Elimination of all future deficit spending.

33 (2) Adoption of future balanced budgets.

34 (3) Restoration of a positive fund balance.

35 (4) Restoration of the 2 percent reserve for economic  
36 uncertainty.

37 (b) During the year following receipt of the emergency loan  
38 pursuant to this act, commencing no later than October 31, and  
39 each year thereafter, until the loan, including interest, is repaid, the  
40 governing board of the Oakland Unified School District shall

1 *prepare and submit four quarterly interim financial reports*  
2 *evidencing progress on its financial recovery plan. The reports*  
3 *shall include, but not be limited to, all of the following*  
4 *information:*

5 *(1) Specific actions taken to reduce expenditures or increase*  
6 *income, and the cost savings and increased income resulting from*  
7 *those actions.*

8 *(2) A copy of the adopted budget for the current fiscal year.*

9 *(3) Reserves for economic uncertainties.*

10 *(4) Status of employee contracts.*

11 *(5) Obstacles to the implementation of the adopted recovery*  
12 *plan.*

13 *(c) The district shall submit the report to the trustee for review.*  
14 *Upon the trustee's approval of the report, the district shall transmit*  
15 *copies to the county superintendent of schools, the Superintendent*  
16 *of Public Instruction, and the Controller.*

17 *SEC. 9. If the Superintendent of Public Instruction, through*  
18 *the trustee, determines that the Oakland Unified School District is*  
19 *not evidencing sufficient progress on its financial recovery plan,*  
20 *the trustee may exercise the powers of an administrator, as*  
21 *provided in Article 2.5 (commencing with Section 41325) of the*  
22 *Education Code.*

23 *SEC. 10. The Oakland Unified School District shall bear 100*  
24 *percent of all costs associated with implementing this act, except*  
25 *for the activities of the County Office Fiscal Crisis and*  
26 *Management Team.*

27 *SEC. 11. Notwithstanding Section 42238.51 of the Education*  
28 *Code, beginning with the 2002–03 fiscal year and continuing*  
29 *through the 2004–05 fiscal year, the Oakland Unified School*  
30 *District's average daily attendance shall be calculated for*  
31 *purposes of paragraph (1) of subdivision (a) of Section 42238.5 of*  
32 *the Education Code, as follows:*

33 *(a) Compute Oakland Unified School District's regular*  
34 *average daily attendance in the current year.*

35 *(b) Compute Oakland Unified School District's second*  
36 *principal apportionment regular average daily attendance for the*  
37 *prior year.*

38 *(c) To the greater of the amounts computed pursuant to*  
39 *subdivisions (a) and (b), add the regular average daily attendance*  
40 *in the current year of all pupils attending charter schools*



1 *sponsored by the district that are not funded pursuant to Article 2*  
2 *(commencing with Section 47633) of Chapter 6 of Part 26 of the*  
3 *Education Code.*

4 *SEC. 12. (a) The sum of one hundred million dollars*  
5 *(\$100,000,000) is hereby appropriated from the General Fund to*  
6 *the Superintendent of Public Instruction for apportionment to the*  
7 *Oakland Unified School District for the purpose of an emergency*  
8 *loan. In order to qualify for the loan, the district shall comply with*  
9 *Article 2 (commencing with Section 41320) and Article 2.5*  
10 *(commencing with Section 41325) of Chapter 3 of Part 24 of the*  
11 *Education Code to the extent those provisions are consistent with*  
12 *the conditions specified in this act.*

13 *(b) Funds may be disbursed from the proceeds of the loan only*  
14 *if the trustee and the County Office Fiscal Crisis and Management*  
15 *Assistance Team jointly determine that the disbursement is*  
16 *necessary.*

17 *(c) Based on the needs of the district to meet its obligations, the*  
18 *Superintendent of Public Instruction may direct the Controller to*  
19 *disburse, on a monthly basis, specific amounts of the emergency*  
20 *loan before the approval of all of the conditions established by this*  
21 *act.*

22 *(d) For the fiscal year in which the loan moneys are disbursed*  
23 *and each fiscal year thereafter, the Controller, or his or her*  
24 *designee, shall cause an audit to be conducted of the books and*  
25 *accounts of the district, instead of the audit required by Section*  
26 *41020 of the Education Code. At the discretion of the Controller,*  
27 *the audit may be conducted by the Controller, his or her designee,*  
28 *or an auditor selected by the county superintendent and approved*  
29 *by the Controller. The costs of the audit shall be paid by the district.*  
30 *An audit is required annually until the Superintendent of Public*  
31 *Instruction, in consultation with the County Office of Education,*  
32 *determines that the district is financially solvent, but may not cease*  
33 *being required earlier than one year following the implementation*  
34 *of the plan required by Section 8 nor later than the time the*  
35 *emergency loan, including interest, is repaid. In addition, the*  
36 *Controller shall conduct quality control reviews pursuant to*  
37 *subdivision (c) of Section 14504.2 of the Education Code.*

38 *SEC. 13. (a) Notwithstanding subparagraph (A) of*  
39 *paragraph (2) of subdivision (a) of Section 41327 of the Education*  
40 *Code, the Oakland Unified School District shall repay the*



1 *emergency loan incurred pursuant to Section 12 of this act as a*  
2 *straight line loan amortized over a 20-year term. This amount*  
3 *shall be repaid by the district, plus interest calculated at a rate*  
4 *equal to the rate earned by the Pooled Money Investment Account*  
5 *on the date this act becomes effective, for a period not to exceed*  
6 *20 years.*

7 *(b) If a required payment is not made within 60 days after a*  
8 *scheduled date, the Controller shall pay the defaulted loan*  
9 *payment of principal and interest by withholding that amount from*  
10 *the next available payment that would otherwise be made to the*  
11 *county treasurer on behalf of the district pursuant to Section 14041*  
12 *of the Education Code. However, subject to the approval of the*  
13 *Department of Finance, the amount withheld may be in monthly*  
14 *amounts as determined by an agreement between the Oakland*  
15 *Unified School District and the Controller during the period*  
16 *beginning with the next available apportionment through the*  
17 *month preceding the next scheduled payment.*

18 *(c) The Director of Finance may amend the payment schedule*  
19 *set forth in subdivision (a) if the director concludes that the*  
20 *amendment is warranted and is in the best interests of both the state*  
21 *and the Oakland Unified School District education program.*  
22 *Upon that determination, the director shall notify the Joint*  
23 *Legislative Budget Committee that the payment scheduled will be*  
24 *changed on the date that is 90 days from the date of notification*  
25 *if the Legislature is in session. If the 90-day period ends during a*  
26 *recess of the Legislature or while the Legislature is not in session,*  
27 *the 90-day period shall be extended until the Legislature*  
28 *reconvenes. Amendments to the payment schedule shall defer the*  
29 *unpaid portion of a repayment of the earliest fiscal year in which*  
30 *no other repayment is scheduled. Interest shall accrue on the*  
31 *unpaid portion of a repayment from the scheduled due date until*  
32 *the time the payment is actually made. The interest charge shall be*  
33 *the rate equal to the daily investment rate of the Pooled Money*  
34 *Investment Account on the date the pay schedule is changed.*

35 *(d) The school district may repay its loan obligation without*  
36 *incurring any prepayment penalties.*

37 *SEC. 14. (a) Notwithstanding Sections 17456, 17462, and*  
38 *17463 of the Education Code, or any other law, from June 1, 2003,*  
39 *to June 30, 2005, inclusive, the Oakland Unified School District*  
40 *may declare as surplus property any property owned by the district,*

1 *and may sell, sell back, lease, or leaseback that property on or*  
 2 *before June 30, 2004, and use the proceeds from the sale, sale back,*  
 3 *lease, or leaseback to reduce or retire the emergency loan provided*  
 4 *by Section 12 of this act. In selling or leasing surplus property*  
 5 *pursuant to this subdivision, the district shall be exempt from the*  
 6 *requirements of Sections 17459 and 17464 of the Education Code.*

7 *SEC. 15. The Alameda County Superintendent of Schools*  
 8 *maintains the responsibility to superintend school districts under*  
 9 *its jurisdiction. This act does not remove any statutory or*  
 10 *regulatory rights, duties, or obligations from the county*  
 11 *superintendent of school.*

12 *SEC. 16. The Department of Finance is authorized to redirect*  
 13 *funds appropriated in Item 6110-107-0001 of Section 2.00 of the*  
 14 *Budget Act of 2002 for the purposes of funding activities of the*  
 15 *County Office Fiscal Crisis and Management Assistance Team*  
 16 *specified in this act.*

17 *SEC. 17. The Legislature finds and declares that due to unique*  
 18 *circumstances relating to the fiscal emergency in the Oakland*  
 19 *Unified School District, a general statute cannot be made*  
 20 *applicable within the meaning of Section 16 of Article IV of the*  
 21 *California Constitution.*

22 ~~*SEC. 4.—*~~

23 *SEC. 18. No reimbursement is required by this act pursuant to*  
 24 *Section 6 of Article XIII B of the California Constitution because*  
 25 *the only costs that may be incurred by a local agency or school*  
 26 *district are the result of a program for which legislative authority*  
 27 *was requested by that local agency or school district, within the*  
 28 *meaning of Section 17556 of the Government Code and Section 6*  
 29 *of Article XIII B of the California Constitution.*

30 *SEC. 19. This act is an urgency statute necessary for the*  
 31 *immediate preservation of the public peace, health, or safety*  
 32 *within the meaning of Article IV of the California Constitution and*  
 33 *shall go into immediate effect. The facts constituting the necessity*  
 34 *are:*

35 *In order to address the fiscal emergency in which the Oakland*  
 36 *Unified School District finds itself and to ensure that it meets its*  
 37 ~~*fiscal obligations as soon as possible*~~ *cash obligations for this*  
 38 *fiscal year, it is necessary that this act take effect immediately.*

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